IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. 19-00014

DIRECTOR OF PUBLIC PROSECUTIONS

v

SILIVA DUFF

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	22 July 2019
DATE OF SENTENCE:	9 August 2019
CASE MAY BE CITED AS:	DPP v Duff
MEDIUM NEUTRAL CITATION:	[2019] VCC 1256

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Plea of guilty – one charge of obtain financial advantage by deception – one charge of handling stolen goods – one charge of attempting to obtain financial advantage by deception – one charge of obtaining property by deception – extensive prior criminal record – theft of an identity of a person – altered details on stolen cheques to obtain gold and silver bullion and coins – planned and sophisticated deception – general deterrence is a central sentencing consideration – participation in the Koori Court process is mitigatory.
Legislation Cited:	*Crimes Act* 1958, *Firearms Act* 1996, *Bail Act* 1977, *Sentencing Act* 1991,
Cases Cited:	*The Queen v Steelie Morgan* [2010] VSCA 14, *Honeysett v The Queen* (2018) 56 VR 375, *DPP v Heyfron* [2019] VSCA 130
Sentence:	Total effective sentence of 2 years imprisonment. Eligible for parole after serving 12 months imprisonment.

APPEARANCES:	Counsel	Solicitors

For the DPP	Mr M Roper	Office of Public Prosecutions
For the Accused	Ms G Connelly	Matthew White & Associates

HIS HONOUR:

Introduction

1 Siliva Duff, you have pleaded guilty to the following charges:

- One charge of obtain financial advantage by deception contrary to s.82(1) of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment (Charge 1);
- One charge of handling stolen goods contrary to s.88 of the *Crimes Act* 1958, which carries a maximum penalty of 15 years imprisonment (Charge 2);
- One charge of attempting to obtain financial advantage by deception contrary to ss.82(1) and 321M of the *Crimes Act* 1958, which carries a maximum penalty of 5 years imprisonment (Charge 3); and
- One charge of obtaining property by deception contrary to s.81(1) of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment (Charge 4).

2 You have also pleaded guilty to the following related summary charges:

- Charge 14, possess cartridge ammunition contrary to s.124(1) of the *Firearms Act* 1996, which carries a maximum penalty of 40 penalty units; and
- Charge 15, commit indictable offences whilst on bail contrary to s.30B of the *Bail Act* 1977 which carries a maximum penalty of 3 months imprisonment or 30 penalty units.

3 You have also admitted your prior Criminal Record.

Circumstances of the offending

4 A prosecution opening was tendered on the plea and may be summarised as follows:

5 On 19 February 2018, the Victorian driver's licence of Matthew Stoupas was stolen.

You and Matthew Stoupas were not known to one another. It is not alleged that you stole the licence, however on 13 March 2018 the licence number was used by you as proof of identification to fraudulently open a Westpac Visa credit card account via an internet application in the name of Matthew Stoupas, with a credit limit of $18,300.00. The real Matthew Stoupas had no knowledge of this credit application. It is these facts that relate to Charge 1, obtain financial advantage by deception.

6 The Westpac credit card was used to purchase goods and services, and on one occasion you are captured on CCTV footage when the card is used at JB Hi Fi. That conduct in this instance is uncharged.

7 On or about 27 March 2018, a law firm, Joshi Lawyers, mailed cheques to a client in relation to a recent property settlement. This mail was stolen and later found in your possession at the time of your arrest, minus the five settlement cheques. It is these facts that relate to Charge 2, handle stolen goods. The cheques were made out as follows:

- Cheque Number 774213, Payee – Wyndham City Council - $19,042.74;
- Cheque Number 774214, Payee – City West Water - $824.41;
- Cheque Number 774215, Payee – Owners Corporation - $14,408.75;
- Cheque Number 774218, Payee – Deputy Commissioner of Taxation - $175,250.00; and
- Cheque Number 774219, Payee – Joshi Lawyers- $1,496.04.

8 On 2 April 2018, you attempted to bank via an ATM three of the cheques that had been taken from the Joshi Lawyers settlement cheques into the Westpac credit card account that had been fraudulently set up in the name of Matthew Stoupas. The

three cheques had the payee altered to read 'Matthew Stoupas'. The cheques were:

- Cheque Number 774214, - $824.41;
- Cheque Number 774215, - $14,408.75; and
- Cheque Number 774219, - $1,496.04.

Total: $16,729.20

9 You were caught on CCTV depositing the cheques at the Westpac Werribee branch via an automatic teller. It is these facts that relation to Charge 3, attempt to obtain financial advantage by deception.

10 On 2 April 2018 an online purchase order was made via the Gold Stackers Australia Pty Ltd (Gold Stackers) website for gold and silver bullion and coins to the total value of $175, 245.55.

11 The customer details provided on the purchase order are as follows:

Matthew Stoupas
54 Powlett Street, Werribee, Victoria 3030.
04 27 265 155

12 On 2 April 2018 at 2:20pm, you attended at the ANZ Werribee branch, located at 24 Watton Street, Werribee. There you deposited the cheque from the Commonwealth Bank, Cheque number 774218, to the value of $175,250.00 to the account of Gold Stackers Australia. The cheque payee had been altered to 'Gold Stackers'.

13 At 11:00am on 3 April 2018, you contacted Kunal Sindhav of Gold Stackers via phone and purported to be Matthew Stoupas. During the phone conversation

you confirmed the details of the online purchase order and stated that you had deposited a bank cheque to the value of $175,250.00 as payment for the order. At this time you were told by Mr Sindhav that you would need to provide photo identification when collecting the order.

14 At approximately 11:30am on 5 April 2018 you called Gold Stackers and spoke with Kim Ngo. After an enquiry was made to establish that the cheque deposit had cleared, you were told to attend at Suite 805, level 8, 227 Collins Street, Melbourne after 1:00pm that day to collect the order.

15 At 1:47pm you attended at the office of Gold Stackers in Collins Street, Melbourne. You provided Mr Ngo with a fake Victorian Drivers Licence with a photo bearing your likeness and the following details. The name on the licence was Matthew Stoupas with a Brighton address.

16 Mr Ngo observed that the address on the licence did not match that provided on the purchase order. He questioned you about the discrepancy. You stated that you had recently changed residential address, had notified Vic Roads and were waiting on the change of address sticker to arrive in the mail.

17 You met with Mr Sindhav in the customer lounge of Gold Stackers and counted each item as per the purchase order. You signed a 'pick-up slip' to acknowledge the receipt of goods. Mr Sindhav observed that the signature on the 'pick-up slip' matched the signature printed on the drivers licence provided by you.

18 At 1:58pm you can be observed on CCTV collecting the gold and silver bullion relating to purchase order and leaving the store.

19 The Commonwealth Bank subsequently picked up on the alteration to the cheque and reversed the payment from Gold Stackers account. The gold and

silver bullions have not been located. It is these facts that relate to Charge 4, obtain property by deception.

20 On 8 January 2018, you were arrested and charged with the theft of a motor vehicle and other offences and bailed to appear at the Werribee Magistrates' Court on the 2 July 2018. As such you were on bail when you committed the indictable offences listed in this opening. These facts relate to summary charge 15, commit indictable offences whilst on bail.

21 On 7 May 2018 and 23 April 2018, Police executed a search warrants at 26 Timbarra Drive, Werribee. Police seized the following items:

- a single round of .45 calibre ammunition, which relates to summary Charge 14;
- clothes associated with your attendance at Gold Stackers;
- two Drivers Licences in the name of Matthew Stoupas altered to contain your photograph;
- a copied image of the drivers licence provided to Gold Stackers on 5 April 2018;
- a Westpac deposit receipt dated 2 April 2018, for $16,729.20;
- stolen mail, including letters addressed to Joshi Legal; and
- mail addressed to 54 Powlett Street, Werribee.

22 You declined to be interviewed in relation to the offending.

1 Nature and gravity of the offending

23 The offences to which you have pleaded guilty represent a series of offences over a three week period essentially involving the theft of an identity of a person and then using that identity to obtain and attempt to obtain financial advantage and property by deception. Once you came into possession of the licence of the victim in this matter, you took a number of steps including that identity in order to complete the deception offences subject to the indictment.

24 The offences were bold and audacious and clearly required a degree of planning by you. You first set up an account in the name of the victim and then you took advantage of that by depositing a number of stolen cheques which had come into your possession. Of the five cheques that were removed from a piece of private mail from a law firm, you initially deposited three of those cheques in the amount of $16,729.20 into the account you had set up. Ultimately those cheques were dishonoured.

25 Charge 4 relates to obtaining property by deception in the amount of $175,245.55. You approached a website that provides gold and silver bullion and coins and placed an order. Again you used the name of the same victim that you used to set up the bank account. You also provided an address and telephone number. On the same day you attended at the ANZ Bank in Werribee where you deposited the stolen bank cheque in the amount of $175,250 into the account of the gold supplier. You had altered the payee name which was originally the Deputy Commissioner of Taxation to Gold Stackers. Three days later you attended at Gold Stackers in order to pick up the gold and silver bullion and coins that you had ordered and maintained the deception by providing the identification of the victim. The attendant at Gold Stackers observed that the address in the licence did not match the address you provided on

the purchase order however you convinced the attendant that you had recently changed your address. You took the property and left. While the cheque was reversed the gold, silver and coins have not been located.

26 Ms Connolly who appeared on your behalf conceded that the offending was organised however she submitted it lacked aggravating features such as being motivated by greed. It was submitted that in the context of your ongoing drug addiction you had incurred debt and that the gold and silver did not stay in your possession but immediately went to the satisfaction of that debt. While I accept that that may have been the case, this was unlike a desperate criminal act in order to quickly obtain money to feed a habit. Rather, this was a planned and somewhat sophisticated deception. Further, you stated to your psychologist that the drug debt was in the order of $50-60,000 which is a significant debt. That said I accept that within the grip of a drug addiction, people respond in ways that do not necessarily follow a clear line of logic.

27 Mr Roper who appeared on behalf the Director of Public Prosecutions submitted that the offending is serious given the quantum involved and the fact that the offending included a degree of planning by setting up false identification and bank accounts.

28 In the circumstances in my view this series of offending represents a serious example of obtaining or attempting to obtain property or financial advantage by deception in circumstances where you were in possession of stolen items including the licence and the cheques taken from the mail of a legal firm.

29 I was told on the plea that the company that lost the gold and silver was covered by an insurance policy however these sorts of offences cause great inconvenience and ultimately cause loss as the items in this instance were never recovered. Further as is reflected in the victim impact statement of Mr Stoupas there is enormous

inconvenience and injury to reputation when someone's identity has been used to commit crimes of this nature.

30 I note also the aggravating circumstance that the offences were committed while you were on a community correction order and also while you were on bail.

Victim Impact statement

31 Matthew Stoupas prepared a victim impact statement that was tendered on the plea. He notes as follows:

> These offences, made in my name, have caused me enormous stress and inconvenience. I have personally spent hours on the phone and in person with banks, investigators and police in attempt to clear my name and reputation.

32 Mr Stoupas goes into further detail as to the effect that your crimes have had on his reputation and that it has caused him embarrassment within the industry in which he runs his business. Further, that his business has been affected adversely as a result of your conduct and the time that it has taken him to unravel the mess that you caused.

Personal circumstances

33 You are 31 years of age and were 30 at the time of the offending. Your father left when you were aged two to three and you had no contact with him again until you were about 17. Your mother is of Koori origins and your father, Tongan. You have four half siblings on your mother's side and three on your father's side. You have been in a relationship with your partner for nine years and you have an 11 year old son from a previous relationship with whom you have regular contact. Your father died of cancer in 2018. You continue to enjoy the support of your mother who attended the plea and wrote a reference on your behalf.

34 You moved between various primary schools and secondary schools however despite that disruption you completed year 12.

35 While still at school you worked in a number of casual jobs including as a telemarketer and as a musician. In 2006 you worked as a labourer, in 2010 you were employed at a distribution warehouse however you ceased that work as a result of a workplace injury to your hand. You received a WorkCover payout and have not worked much since approximately 2011 as a consequence. You have however been involved in the music industry and worked in that area since 2012.

36 In November 2014 your older brother was a victim in a double homicide. You state in a letter you provided to the court that he was addicted to ice and as such following his death, you decided that you would try to stay away from drugs. It would seem that for a period of time in 2015 you were drug free. Self-evidently however you began to use again and incurred a drug debt which ultimately was the motivator behind this offending.

37 In 2015 you toured Australia with a well-known rap artist as a supporting act and as noted, you were drug free for a few months during that period. However while struggling with the death of your brother you state that you fell back into drug use. Your recent criminal history demonstrates that you have been in contact with the criminal justice system frequently over the past few years in relation to dishonesty and drug offences.

38 In 2018 you were granted bail to attend the Wellbeing Planet for a one month residential drug rehabilitation program which you completed successfully. That program also included counselling following the in house treatment where you began to deal with the grief associated with the death of your brother. Since that time you have indicated that you have not used ice consistently since about April or May 2018.

39 A report was prepared by psychologist Carla Lechner and tendered on the plea. Ms Lechner provides a detailed history and also provided results from psychometric testing she conducted. Ms Lechner concludes that you present with a Stimulant Use Disorder and a range of symptoms of Post-Traumatic Stress Disorder as a result of the loss of your brother. She also noted a mild to moderate level of depression. Unsurprisingly, Ms Lechner concludes that further counselling in relation to your drug use and the death of your brother would be of great benefit to you.

40 Also tendered on the plea were references from your mother and a close friend. Your mother remains supportive of you and she attended the plea hearing, sitting at the table during the sentencing conversation. She notes the difficulties you have suffered as a result of the death of your brother. Your mother is very involved in the Aboriginal community and states that now you are beginning on your path to rehabilitation, you wish to involve yourself in your community, learn about your culture and continue your art and music in that context. She believes that your behaviour is out of character and notes that you have expressed to her that you wish you could pay back the victim. The letter from your friend and colleague who is in the music industry states that you are a loving father to your son and believes you are a talented musician.

41 While in custody you have remained drug free which was confirmed in drug screens tendered to the court. You have also engaged in programs in custody to further address you drug issues.

Sentencing considerations

42 Firstly I take into account your plea of guilty which was entered at a directions hearing in this court. You did not cross examine any witnesses at the committal and discussions with an aim to settle the matter were continuing when the matter first

came before this court. As such in my view your plea of guilty is able to considered as an early plea. Your plea of guilty also demonstrates your acceptance of responsibility and it has saved the cost and time of a trial.

43 As to genuine remorse, I note that you expressed to your mother that you wish you could pay back the victim. Further the letter tendered from the Wellbeing Planet conveys that you are remorseful and appreciative of the seriousness of your actions. That said I note in the report of Carla Lechner that while you say you are disappointed in your actions, you also say that you feel better now that you are 'no longer stuck with a drug debt'. Therefore in my view while I accept that you are gaining insight into your criminal conduct, you have some distance to go in order to genuinely appreciate the true meaning of remorse which is an appreciation of the effect your conduct has had on the victim in this instance.

44 As to your prospects of rehabilitation, in my view having reviewed the evidence of your recent progress in custody, including the negative drugs screens and courses you have undertaken, it is clear that you are making positive efforts. Further, having seen you and spoken to you during the Koori Court sentencing conversation, in my view you are genuine in your desire to change and move on. Your biggest hurdle is of course your drug addiction which has been behind much of your offending in the past. In my view despite your extensive criminal history and failure to take advantage of the opportunities given to you in the past by way of corrections orders, you are now showing positive signs of a more sustained path to rehabilitation.

45 General deterrence is a central sentencing consideration in this case. Further in my view specific deterrence must also carry weight. You have an extensive criminal history which includes relevant and related prior offending. The offending in this instance occurred while you were on a community correction order and while you

were on bail. Indeed you have had a number of community correction orders in the past which have been breached and/or cancelled. Two orders you were given in 2015 were contravened and cancelled. The order you received in 2017 has 357 hours of the 400 remaining and a breach is pending due to non-compliance and further offending.

46 I take into account your participation in the Koori Court. It is confronting to sit face to face with respected elders of your community and your involvement in the process is a factor that is relevant to sentencing.

47 The Court of Appeal has recognised that the 'sentencing conversation' in the Koori Court is designed to 'further the reformation of an Aboriginal offender'[1] and is rightly considered to be a mitigating factor.[2] More recently these principles have been reiterated in *Director of Public Prosecutions v Heyfron*[3]. After referring to the principles outlined in *Honeysett v The Queen,* Kaye JA stated:

> In the present case, those factors apply, in fair measure, to the manner in which the respondent has participated in the Sentencing Conversation in the course of the plea hearing. While the participation of an offender, in that process, is by no means a ticket to freedom, nevertheless, as a matter of sentencing principle, it is appropriate to take it into account for the reasons explained by the Court in *Morgan* and *Honeysett.*

48 Ms Connelly submitted that a combination sentence pursuant to s.44 of the *Sentencing Act* 1991 is within range. Mr Roper submitted that given the gravity of the offending including the quantum, the fact that you were on bail and a community correction order at the time and your prior criminal history, the only available sentence is a term of imprisonment with a non-parole period.

49 In all the circumstances, including taking into account your non-compliance and

1 *The Queen v Steelie Morgan* [2010] VSCA 14 at page 11.
2 *Honeysett v The Queen* (2018) 56 VR 375 at [54].
3 [2019] VSCA 130.

failure to complete a number of previous community correction orders, in my view a term of imprisonment with a non-parole period is the only sentencing disposition that is able to meet the relevant sentencing considerations in this instance. However, because of the very real steps you are taking to rehabilitate yourself, in my view a longer than usual non parole period will provide you the opportunity to continue your rehabilitation in the community while still being subject to supervision.

50 Finally I take in to account the fact that of the time you have been in custody pending resolution of this matter, 29 days are related to separate offending and unable to be declared under s 18 of the *Sentencing Act* 1991.

Sentence

51 Mr Duff, please stand.

52 Siliva Duff in relation to Charge 1, obtaining financial advantage by deception, you will be convicted and sentenced to 10 months imprisonment.

53 In relation to Charge 2, handle stolen goods, you will be convicted and sentenced to 6 months imprisonment.

54 In relation to Charge 3, attempting to obtain a financial advantage by deception, you will be convicted and sentenced to 6 months imprisonment.

55 In relation to Charge 4, obtaining property by deception, you will be convicted and sentenced to 18 months imprisonment. This will be the base sentence.

56 In relation to summary Charge 14, possess cartridge ammunition, you will be convicted and fined $500.

57 In relation to summary Charge 15, committing an indictable offence whilst on bail, you will be convicted and sentenced to 1 month imprisonment.

58 I direct that 3 months of the sentence on Charge 1, 1 month of the sentence on Charge 2 and 2 months of the sentence on Charge 3 be served cumulatively on each other and on Charge 4. That makes for a total effective sentence of 2 years imprisonment. I direct that you serve 12 months imprisonment before becoming eligible for parole.

59 Pursuant to s.18 of the *Sentencing Act* I declare that 213 days be reckoned as a period of imprisonment already served under the sentence I have imposed. That does not include today.

60 Pursuant to s.6AAA of the *Sentencing Act* 1991, I indicate that had you not pleaded guilty, I would have sentenced you to a period of 2 years and 6 months imprisonment months imprisonment with a non-parole period of 16 months.